

AMENDED IN SENATE APRIL 27, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1602

Introduced by Senator Battin

February 24, 2006

An act to ~~add Section 346.5 to~~ *amend Section 346 of the Penal Code, relating to crimes.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1602, as amended, Battin. Scalping of tickets.

Existing law provides that any person who, without the written permission of the owner or operator of the property on which an entertainment event is to be held or is being held, sells a ticket of admission to the entertainment event, which was obtained for the purpose of resale, at any price which is in excess of the price that is printed or endorsed upon the ticket, while on the grounds of or in the stadium, arena, theater, or other place where an event for which admission tickets are sold is to be held or is being held, is guilty of a misdemeanor.

This bill would provide, in addition, that ~~any a person, as specified, who knowingly and without permission buys more tickets than allowed by the original ticket seller~~ *buys more tickets than allowed under the maximum ticket purchase limit with the intent to resell the tickets for a commercial purposes* is guilty of a misdemeanor. This bill would also provide for civil remedies for the original ticket seller when a person buys more tickets than allowed by the original ticket seller.

~~Existing law makes it a public offense to commit an act, as specified, that tampers, interferes, or damages computer data, systems, or networks.~~

~~This bill would, in addition make it a public offense to interfere with the computer system of an original ticket seller in order to attempt to buy more tickets than authorized by the original ticket seller and with the intent of reselling the tickets purchased for commercial gain. By creating new crimes, this bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 346 of the Penal Code is amended to
2 read:

3 346. (a) Any person who, without the written permission of
4 the owner or operator of the property on which an entertainment
5 event is to be held or is being held, sells a ticket of admission to
6 the entertainment event, which was obtained for the purpose of
7 resale, at any price which is in excess of the price that is printed
8 or endorsed upon the ticket, while on the grounds of or in the
9 stadium, arena, theater, or other place where an event for which
10 admission tickets are sold is to be held or is being held, is guilty
11 of a misdemeanor.

12 (b) ~~Any~~ Except for a licensed ticket broker, any person who
13 knowingly purchases tickets to an event ~~from any combination of~~
14 ~~sources from the original ticket seller with the intent to resell the~~
15 ~~tickets for an amount higher than the face value of the ticket and~~
16 in a quantity that exceeds the maximum ticket purchase limit as
17 ~~posted on the ticket or as posted at the point of original sale~~
18 ~~stated at the original ticket seller's point of sale~~, without
19 permission from the original ticket seller ~~or agent~~ is guilty of a
20 misdemeanor.

(c) In addition to any other civil remedy available, the original ticket seller, ~~or, where applicable, the agent of the original ticket seller,~~ may bring a civil action against any person who violates subdivision (b) of this section for injunctive relief or other equitable relief and for compensatory damages. Compensatory damages shall include the greater of five thousand dollars (\$5,000) per violation or actual losses incurred by the original ticket seller ~~or its agent~~ by reason of the violation.

(d) No person or firm shall be subject to the provisions of this section if the person or firm is the original ticket seller, ~~or if the person or firm provides services under contract with the original ticket seller~~ *seller, or if the person is a licensed ticket broker.*

(e) For purposes of this section an “original ticket seller” is the party who controls the right to issue and sell tickets to the public for a live entertainment event, ~~and may include, but is not limited to, the operator of the venue where the event occurs, a sports team or a league playing in the event, the producer of the event, or the performer of the event.~~ An “agent” is a representative who has entered into a written contract with the original seller to sell to the general public tickets to the event on behalf of the original seller. ~~event or any agent who sells the tickets on behalf of and under contract with the original ticket seller.~~ A “licensed ticket broker” is a ticket seller with a permanent address from which tickets may only be sold, the address is included in any advertisement or solicitation, and who is duly licensed as required by any local jurisdiction.

SEC. 2. Section 502 of the Penal Code is amended to read:

502. (a) ~~It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.~~

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial

1 institutions, business concerns, governmental agencies, and
2 others within this state that lawfully utilize those computers,
3 computer systems, and data.

4 (b) For the purposes of this section, the following terms have
5 the following meanings:

6 (1) “Access” means to gain entry to, instruct, or communicate
7 with the logical, arithmetical, or memory function resources of a
8 computer, computer system, or computer network.

9 (2) “Computer network” means any system that provides
10 communications between one or more computer systems and
11 input/output devices including, but not limited to, display
12 terminals and printers connected by telecommunication facilities.

13 (3) “Computer program or software” means a set of
14 instructions or statements, and related data, that when executed in
15 actual or modified form, cause a computer, computer system, or
16 computer network to perform specified functions.

17 (4) “Computer services” includes, but is not limited to,
18 computer time, data processing, or storage functions, or other
19 uses of a computer, computer system, or computer network.

20 (5) “Computer system” means a device or collection of
21 devices, including support devices and excluding calculators that
22 are not programmable and capable of being used in conjunction
23 with external files, one or more of which contain computer
24 programs, electronic instructions, input data, and output data, that
25 performs functions including, but not limited to, logic,
26 arithmetic, data storage and retrieval, communication, and
27 control.

28 (6) “Data” means a representation of information, knowledge,
29 facts, concepts, computer software, computer programs or
30 instructions. Data may be in any form, in storage media, or as
31 stored in the memory of the computer or in transit or presented
32 on a display device.

33 (7) “Supporting documentation” includes, but is not limited to,
34 all information, in any form, pertaining to the design,
35 construction, classification, implementation, use, or modification
36 of a computer, computer system, computer network, computer
37 program, or computer software, which information is not
38 generally available to the public and is necessary for the
39 operation of a computer, computer system, computer network,
40 computer program, or computer software.

1 ~~(8) “Injury” means any alteration, deletion, damage, or~~
2 ~~destruction of a computer system, computer network, computer~~
3 ~~program, or data caused by the access, or the interference with or~~
4 ~~denial of access to legitimate users of a computer system,~~
5 ~~network, or program.~~

6 ~~(9) “Victim expenditure” means any expenditure reasonably~~
7 ~~and necessarily incurred by the owner or lessee to verify that a~~
8 ~~computer system, computer network, computer program, or data~~
9 ~~was or was not altered, deleted, damaged, or destroyed by the~~
10 ~~access.~~

11 ~~(10) “Computer contaminant” means any set of computer~~
12 ~~instructions that are designed to modify, damage, destroy, record,~~
13 ~~or transmit information within a computer, computer system, or~~
14 ~~computer network without the intent or permission of the owner~~
15 ~~of the information. They include, but are not limited to, a group~~
16 ~~of computer instructions commonly called viruses or worms, that~~
17 ~~are self-replicating or self-propagating and are designed to~~
18 ~~contaminate other computer programs or computer data,~~
19 ~~consume computer resources, modify, destroy, record, or~~
20 ~~transmit data, or in some other fashion usurp the normal~~
21 ~~operation of the computer, computer system, or computer~~
22 ~~network.~~

23 ~~(11) “Internet domain name” means a globally unique,~~
24 ~~hierarchical reference to an Internet host or service, assigned~~
25 ~~through centralized Internet naming authorities, comprising a~~
26 ~~series of character strings separated by periods, with the~~
27 ~~rightmost character string specifying the top of the hierarchy.~~

28 ~~(e) Except as provided in subdivision (h), any person who~~
29 ~~commits any of the following acts is guilty of a public offense:~~

30 ~~(1) Knowingly accesses and without permission alters,~~
31 ~~damages, deletes, destroys, or otherwise uses any data, computer,~~
32 ~~computer system, or computer network in order to either (A)~~
33 ~~devise or execute any scheme or artifice to defraud, deceive, or~~
34 ~~extort, or (B) wrongfully control or obtain money, property, or~~
35 ~~data.~~

36 ~~(2) Knowingly accesses and without permission takes, copies,~~
37 ~~or makes use of any data from a computer, computer system, or~~
38 ~~computer network, or takes or copies any supporting~~
39 ~~documentation, whether existing or residing internal or external~~
40 ~~to a computer, computer system, or computer network.~~

~~(3) Knowingly and without permission uses or causes to be used computer services.~~

~~(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.~~

~~(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.~~

~~(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.~~

~~(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.~~

~~(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.~~

~~(9) Knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network.~~

~~(10) Attempts to purchase tickets to an event via a computer system or computer network for the purpose of reselling the tickets for commercial gain and in the course of attempting to purchase the tickets, interferes with the operation of the ticket seller's Web site or the ability of other potential ticket purchasers to access the site. It shall be prima facie evidence that an attempt was made to purchase tickets for the purpose of reselling the tickets for commercial gain if the quantity of tickets purchased exceeds a maximum ticket limit quantity posted by or on behalf of the original ticket seller at the point of original sale, or posted on the tickets themselves.~~

~~(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in~~

1 a county jail not exceeding one year, or by both that fine and
2 imprisonment.

3 (2) Any person who violates paragraph (3) of subdivision (c)
4 is punishable as follows:

5 (A) For the first violation that does not result in injury, and
6 where the value of the computer services used does not exceed
7 four hundred dollars (\$400), by a fine not exceeding five
8 thousand dollars (\$5,000), or by imprisonment in a county jail
9 not exceeding one year, or by both that fine and imprisonment.

10 (B) For any violation that results in a victim expenditure in an
11 amount greater than five thousand dollars (\$5,000) or in an
12 injury, or if the value of the computer services used exceeds four
13 hundred dollars (\$400), or for any second or subsequent
14 violation, by a fine not exceeding ten thousand dollars (\$10,000);
15 or by imprisonment in the state prison for 16 months, or two or
16 three years, or by both that fine and imprisonment, or by a fine
17 not exceeding five thousand dollars (\$5,000), or by imprisonment
18 in a county jail not exceeding one year, or by both that fine and
19 imprisonment.

20 (3) Any person who violates paragraph (6) or (7) of
21 subdivision (c) is punishable as follows:

22 (A) For a first violation that does not result in injury, an
23 infraction punishable by a fine not exceeding one thousand
24 dollars (\$1,000).

25 (B) For any violation that results in a victim expenditure in an
26 amount not greater than five thousand dollars (\$5,000), or for a
27 second or subsequent violation, by a fine not exceeding five
28 thousand dollars (\$5,000), or by imprisonment in a county jail
29 not exceeding one year, or by both that fine and imprisonment.

30 (C) For any violation that results in a victim expenditure in an
31 amount greater than five thousand dollars (\$5,000), by a fine not
32 exceeding ten thousand dollars (\$10,000), or by imprisonment in
33 the state prison for 16 months, or two or three years, or by both
34 that fine and imprisonment, or by a fine not exceeding five
35 thousand dollars (\$5,000), or by imprisonment in a county jail
36 not exceeding one year, or by both that fine and imprisonment.

37 (4) Any person who violates paragraph (8) or (10) of
38 subdivision (c) is punishable as follows:

39 (A) For a first violation that does not result in injury, a
40 misdemeanor punishable by a fine not exceeding five thousand

1 dollars (\$5,000), or by imprisonment in a county jail not
2 exceeding one year, or by both that fine and imprisonment.

3 (B) For any violation that results in injury, or for a second or
4 subsequent violation, by a fine not exceeding ten thousand
5 dollars (\$10,000), or by imprisonment in a county jail not
6 exceeding one year, or in the state prison, or by both that fine and
7 imprisonment.

8 (5) Any person who violates paragraph (9) of subdivision (c)
9 is punishable as follows:

10 (A) For a first violation that does not result in injury, an
11 infraction punishable by a fine not one thousand dollars.

12 (B) For any violation that results in injury, or for a second or
13 subsequent violation, by a fine not exceeding five thousand
14 dollars (\$5,000), or by imprisonment in a county jail not
15 exceeding one year, or by both that fine and imprisonment.

16 (e) (1) In addition to any other civil remedy available, the
17 owner or lessee of the computer, computer system, computer
18 network, computer program, or data who suffers damage or loss
19 by reason of a violation of any of the provisions of subdivision
20 (c) may bring a civil action against the violator for compensatory
21 damages and injunctive relief or other equitable relief.
22 Compensatory damages shall include the greater of five thousand
23 dollars (\$5,000) or any expenditure reasonably and necessarily
24 incurred by the owner or lessee to verify that a computer system,
25 computer network, computer program, or data was or was not
26 altered, damaged, or deleted by the access. For the purposes of
27 actions authorized by this subdivision, the conduct of an
28 unemancipated minor shall be imputed to the parent or legal
29 guardian having control or custody of the minor, pursuant to the
30 provisions of Section 1714.1 of the Civil Code.

31 (2) In any action brought pursuant to this subdivision the court
32 may award reasonable attorney's fees.

33 (3) A community college, state university, or academic
34 institution accredited in this state is required to include
35 computer-related crimes as a specific violation of college or
36 university student conduct policies and regulations that may
37 subject a student to disciplinary sanctions up to and including
38 dismissal from the academic institution. This paragraph shall not
39 apply to the University of California unless the Board of Regents
40 adopts a resolution to that effect.

1 ~~(4) In an action brought pursuant to this subdivision for a~~
2 ~~willful violation of the provisions of subdivision (c), where it is~~
3 ~~proved by clear and convincing evidence that a defendant has~~
4 ~~been guilty of oppression, fraud, or malice as defined in~~
5 ~~subdivision (c) of Section 3294 of the Civil Code, the court may~~
6 ~~additionally award punitive or exemplary damages.~~

7 ~~(5) No action may be brought pursuant to this subdivision~~
8 ~~unless it is initiated within three years of the date of the act~~
9 ~~complained of, or the date of the discovery of the damage,~~
10 ~~whichever is later.~~

11 ~~(f) This section shall not be construed to preclude the~~
12 ~~applicability of any other provision of the criminal law of this~~
13 ~~state which applies or may apply to any transaction, nor shall it~~
14 ~~make illegal any employee labor relations activities that are~~
15 ~~within the scope and protection of state or federal labor laws.~~

16 ~~(g) Any computer, computer system, computer network, or~~
17 ~~any software or data, owned by the defendant, that is used during~~
18 ~~the commission of any public offense described in subdivision~~
19 ~~(c) or any computer, owned by the defendant, which is used as a~~
20 ~~repository for the storage of software or data illegally obtained in~~
21 ~~violation of subdivision (c) shall be subject to forfeiture, as~~
22 ~~specified in Section 502.01.~~

23 ~~(h) (1) Except as provided in paragraph (10) of subdivision~~
24 ~~(e), subdivision (e) does not apply to punish any acts which are~~
25 ~~committed by a person within the scope of his or her lawful~~
26 ~~employment. For purposes of this section, a person acts within~~
27 ~~the scope of his or her employment when he or she performs acts~~
28 ~~which are reasonably necessary to the performance of his or her~~
29 ~~work assignment.~~

30 ~~(2) Paragraph (3) of subdivision (e) does not apply to penalize~~
31 ~~any acts committed by a person acting outside of his or her~~
32 ~~lawful employment, provided that the employee's activities do~~
33 ~~not cause an injury, as defined in paragraph (8) of subdivision~~
34 ~~(b), to the employer or another, or provided that the value of~~
35 ~~supplies or computer services, as defined in paragraph (4) of~~
36 ~~subdivision (b), which are used does not exceed an accumulated~~
37 ~~total of one hundred dollars (\$100).~~

38 ~~(i) No activity exempted from prosecution under paragraph (2)~~
39 ~~of subdivision (h) which incidentally violates paragraph (2), (4),~~

1 or (7) of subdivision (c) shall be prosecuted under those
2 paragraphs:

3 (j) ~~For purposes of bringing a civil or a criminal action under~~
4 ~~this section, a person who causes, by any means, the access of a~~
5 ~~computer, computer system, or computer network in one~~
6 ~~jurisdiction from another jurisdiction is deemed to have~~
7 ~~personally accessed the computer, computer system, or computer~~
8 ~~network in each jurisdiction:~~

9 (k) ~~In determining the terms and conditions applicable to a~~
10 ~~person convicted of a violation of this section the court shall~~
11 ~~consider the following:~~

12 (1) ~~The court shall consider prohibitions on access to and use~~
13 ~~of computers:~~

14 (2) ~~Except as otherwise required by law, the court shall~~
15 ~~consider alternate sentencing, including community service, if~~
16 ~~the defendant shows remorse and recognition of the wrongdoing,~~
17 ~~and an inclination not to repeat the offense:~~

18 ~~SEC. 3.~~

19 *SEC. 2.* No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the
24 penalty for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition of a
26 crime within the meaning of Section 6 of Article XIII B of the
27 California Constitution.